

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DENISE THURMOND,

Plaintiff,

v.

OFFICER S. K. SEARS, et al.,

Defendants.

CASE NO. 1:01-cv-00366

Judge Spiegel

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**FINAL PRETRIAL ORDER**

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This action came before the Court at a Final Pretrial Conference held on the 27<sup>th</sup> day of January, 2005, at 3:00 p.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

**I. APPEARANCES:**

For Plaintiff:

Ronald C. Morgan, Esq.  
118 S. Second Street  
Hamilton, OH 45011

For Defendants:

Wilson G. Weisenfelder, Jr., Esq.  
RENDIGS, FRY, KIELY & DENNIS, L.L.P.  
One West Fourth Street, Suite 900  
Cincinnati, OH 45202

John H. Clemmons, Esq.  
City of Fairfield Law Director  
MILLIKIN & FITTON  
530 Wessel Drive, Suite 2A  
Fairfield, OH 45014

**II. NATURE OF ACTION AND JURISDICTION:**

- B. This is an action for alleged violations of Plaintiff's civil rights brought pursuant to 42 U.S.C. §1983.
- C. The jurisdiction of the Court is invoked under Title United States Code, Section 1331.
- D. The jurisdiction of the Court is not disputed.

**III. TRIAL INFORMATION:**

- A. The established length of trial is 4 days. However, counsel for Defendants believes the case can be tried in 2 days.
- B. (1) Trial to a jury has been set for March 15, 2005, beginning at 9:30 a.m.

**AGREED STATEMENTS AND LISTS:**

**A. General Nature of the Claims of the Parties:**

**(1) PLAINTIFF'S CLAIMS:**

Plaintiff maintains her stop by Defendants, S. K. Sears and Amy Gruenemeier on or about November 15, 2000 in the City of Fairfield, Ohio was done so without probable cause and in violation of Plaintiff's Fourth Amendment Rights.

Plaintiff also contends her subsequent arrest, search and prosecution occurred as a result of her race in violation of the Fourteenth Amendment.

Plaintiff's Third Cause of Action against the City of Fairfield, Ohio was dismissed by this Court's Order on July 24, 2003.

**(2) DEFENDANTS' CLAIMS:**

The Defendants maintain they had probable cause to arrest and charge Plaintiff for DUI.

These Defendants, accordingly, assert they did not violate any Constitutional right of the Plaintiff, thereby barring Plaintiff's claims against them. In addition, these officers maintain they are entitled to qualified immunity.

**B. Uncontroverted Facts**

Plaintiff was stopped by Officers Gruenemeier and Sears on November 14, 2000 in the City of Fairfield, Ohio. Plaintiff was traveling northbound on State Route 127 in Fairfield, Ohio at approximately sometime after 2:30 a.m. Thurmond was stopped for speeding by Officer Sears.

Thurmond was driving a 1987 red BMW. Thurmond had owned the car for approximately 40-50 days. The license tags on the BMW were actually registered to a 1990 Hyundai.

Officer Sears determined the license tags on the BMW was registered to another vehicle.

Officer Sears believed Plaintiff smelled of alcohol or there was an odor of alcohol coming from Plaintiff's car. The Plaintiff was asked to perform a number of field sobriety tests. She was charged with DUI. She was also cited for speeding and illegal tags.

Plaintiff was taken to the Fairfield police station where a breathalyzer test was administered. It was determined the breathalyzer revealed a result of 0.0. A urine specimen was also taken and submitted for analysis. The results of the urine analysis were negative for illicit drugs. Upon receipt of those results, the DUI charges against Plaintiff were dismissed.

**C. Issues of Fact and Law:**

**A. CONTESTED ISSUES OF FACT:**

1. Whether the officers had probable cause to arrest Plaintiff for DUI.
2. Whether Plaintiff failed the field sobriety test.
3. Whether the officers' arrest of Plaintiff was because of her race.
4. Nature and extent of any damages suffered by Plaintiff.

**B. CONTESTED ISSUES OF LAW:**

The contested issues of law in addition to those implicit in the foregoing Issues of Fact include:

1. Whether the officers are entitled to qualified immunity.

**D. Witnesses:**

Plaintiff will call or will have available for testimony at trial those witnesses listed on Appendix A hereof.

Defendant will call or will have available for testimony at trial those witnesses listed on Appendix B hereof.

**E. Expert Witnesses:**

Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to the other side:

Plaintiff One

Defendants: Two

**F. Exhibits:**

The parties will offer as exhibits those items listed herein as follows:

- (1) Joint Exhibits - Appendix E.
- (2) Plaintiff's Exhibits - Appendix F.
- (3) Defendant Exhibits - Appendix G
- (4) Third-Party Exhibits - Appendix H

**G. Discovery:**

Discovery has been completed.

**H. Pending Motions:**

There are no pending Motions.

**I. Miscellaneous Orders:**

There are no miscellaneous pending Orders.

**IV. MODIFICATION.**

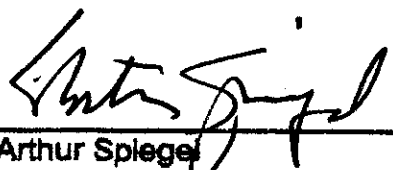
This final pretrial order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel, or on motion of the Court.

**V. SETTLEMENT EFFORTS.**

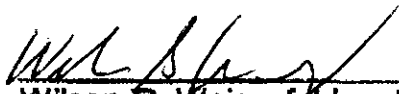
Defendants have made an Offer of Judgment in the amount of \$7,501 pursuant to Fed. R. Civ. P. 68. No response has been received from Plaintiff. Plaintiff verbally declined Defendants' settlement offer of \$ 7,501.00 on January 20, 2005. Plaintiff will settle for \$75,000.00.

**VI. A. TRIAL TO A JURY.**

The parties will submit proposed Jury Instructions at least three days prior to trial.

  
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S. Arthur Spiegel  
United States Senior District Judge

  
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Ronald C. Morgan  
Counsel for Plaintiff

  
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Wilson G. Weisenthaler, Jr.  
Counsel for Defendants

**APPENDIX A**  
**PLAINTIFF WITNESSES**

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>	<b><u>SYNOPSIS OF TESTIMONY</u></b>
Denise Thurmond	605 Martin Luther King Dr. Hamilton, Ohio 45011	It is anticipated that Plaintiff Denise Thurmond will testify as to the events of November 14, 2000 and the damages she sustained as the result of her arrest.
Sharma Rakesh, M.D.	3570 Pleasant Avenue Hamilton, Ohio 45015	It is undisputed that Rakesh Sharma M.D. will testify as to diagnosis and treatment of Plaintiff for conditions caused by Defendants actions.

Counsel for Plaintiff reserve the right to call any witness identified by Defendant.

**APPENDIX B**

**DEFENDANTS' WITNESSES**

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>	<b><u>SYNOPSIS OF TESTIMONY</u></b>
Denise Thurmond	605 Martin Luther King Dr. Hamilton, OH 45011	It is anticipated Denise Thurmond will testify as if upon cross-examination concerning the events of November 14, 2000
Officer Gruenemeier	Fairfield Police Dept. 4951 Dixie Highway Fairfield, OH 45014	It is anticipated Officer Gruenemeier will testify with regard to the events of November 14, 2000 as they relate to the stop and arrest of Plaintiff.
Officer Sears	Fairfield Police Dept. 4951 Dixie Highway Fairfield, OH 45014	It is anticipated Officer Sears will testify concerning the events of November 14, 2000 as they relate to the stop and arrest of Plaintiff.

Counsel for Defendants reserve the right to call any witness identified by Plaintiff.

**APPENDIX G**

**EXHIBITS OF DEFENDANTS**

**(Use letters)**

<b><u>NUMBER</u></b>	<b><u>DESCRIPTIONS</u></b>	<b><u>OFFERED</u></b>	<b><u>ADMITTED</u></b>	<b><u>PROFFERED</u></b>
A	Fairfield Police Department Impaired Driver Report dated Nov. 14, 2000			
B	Fairfield Municipal Court Entry dated Jan. 4, 2001 Case No. 2000TRD05269- 03			
C	Fairfield Municipal Court, Fairfield, Ohio Entry Case No. 2000TRC05269- 02 Dated Jan. 4, 2001			
D	Photograph of Plaintiff's 1987 BMW			